

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
GLITTERWRAP, INC.

Plaintiff,

v.

NYGALA CORP.,
SHENNY ENTERPRISES, INC., and John
Does Nos. 1-50

Defendants.
-----X

JUDGE JONES

07 CIV COMPLAINT

7992

Civ. No.

JURY TRIAL REQUESTED



Plaintiff, Glitterwrap, Inc., by and through its attorneys, Sofer & Haroun, LLP,
upon information and belief, alleges as follows:

PARTIES

1. Plaintiff Glitterwrap, Inc. (hereinafter "Glitterwrap") is a corporation organized and existing under the laws of the State of New Jersey with a principal place of business at 701 Ford Road, Rockaway, New Jersey 07866.

2. "Glitterwrap" is a corporation doing business in the State of New York.

3. Upon information and belief, Defendant Shenny Enterprises, Inc. (hereinafter "Shenny") is a corporation organized and existing under the laws of the State of New Jersey with a principal place of business at 300-3E Route 17 South, Lodi, NJ 07644.

4. "Shenny" is a corporation doing business within the State of New York.
5. Upon information and belief, Defendant Nygala Corp. (hereinafter "Nygala") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business at 300-3E Route 17 South, Lodi, NJ 07644.
6. "Nygala" is a corporation doing business within the State of New York.
7. Defendants Shenny Enterprises, Inc. and Nygala Corp. are hereinafter collectively referred to as "Defendants."
8. Defendant John Does Nos. 1-50 are Defendants' retail customers which will be added as additional defendants once identified.

JURISDICTION AND VENUE

9. This is a civil action arising under the copyright laws of the United States and particularly, under 17 U.S.C. §101, *et seq.*, and seeks to redress the infringement of copyright.
10. This is a civil action seeking damages and injunctive relief under 17 U.S.C. §502 and §504.
11. Defendants are subject to the jurisdiction of this Court pursuant to 28 U.S.C. §1338.
12. This Court has personal jurisdiction over Defendants in that Defendants have done and continue to do business in the State of New York under 3 C.P.L.R. §302.
13. Venue is proper in this District pursuant to 28 U.S.C. §1391.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

14. Since 1987, Glitterwrap has established a name and reputation in the craft industry as a designer, producer, and seller of quality stationary, gift, and novelty products, including gift paper and gift bags.

15. Among the popular products sold by Glitterwrap is a collection of festive designs tissue paper including "Birthday Blocks" and "Pastel Streamers" sold under product codes (SE4110240 and SE4111440) respectively, hereinafter referred to as "Glitterwrap's Designs."

16. Some of Glitterwrap's Designs were introduced and used in commerce as early as 2001. Copies of these designs are attached herewith as Exhibit 1.

17. Through Glitterwrap's continued use and sale of its products, Glitterwrap has achieved a high level of recognition and good will, and is well-recognized as a leading designer, producer, manufacturer and seller of quality paper products in the United States.

18. Glitterwrap's Designs have been afforded Copyright Registration VA 1-266-204. A copy of the Certificate of Registration is attached herewith as Exhibit 2.

19. Glitterwrap's Designs have been afforded Copyright Registration VA-1-318-190. A copy of the Certificate of Registration is attached herewith as Exhibit 3.

20. Glitterwrap is the owner of U.S. Copyright Registration VA 1-266-204, which registered on May 26, 2004 and U.S. Copyright Registration VA 1-318-190, which registered on February 14, 2005, hereinafter referred to as "Glitterwrap's Copyrights" and is the sole authorized distributor of these products.

21. In June 2007, Glitterwrap became aware that Defendants were selling certain items with designs that were the same or derivatives of Glitterwrap's Designs (Exhibit 1) and Glitterwrap's Copyrights. (Exhibits 2 and 3)

22. The products constitute unauthorized copies of Glitterwrap's Designs and thus their manufacture, distribution and promotion constitute infringement of Glitterwrap's Copyrights.

23. In particular, Defendants' products numbers NH-TSBB01L and NH-TSBB01 Birthday Blocks represents Defendants' tissue paper designs, which infringe on Glitterwrap's intellectual property rights with regard to its Birthday Blocks. A copy of Defendants' accused product is attached as Exhibit 4.

24. Defendants' product number NH-TSBB01 Pastel Streamers also represents one of Defendants' tissue paper designs, which infringes on Glitterwrap's intellectual property rights with regard to its Pastel Streamers. A copy of Defendants' accused product is attached as Exhibit 5.

25. As seen in Exhibits 4 and 5, the designs shown on Defendants' products are identical to Glitterwrap's copyrighted designs (Exhibits 1, 2, and 3).

26. On or about July 9, 2007, Glitterwrap, by and through its attorneys, Sofer & Haroun, LLP, informed Defendants by a Cease and Desist Letter of its infringement of Glitterwrap's Designs in an effort to resolve this dispute. A copy of the July 9 letter is attached as Exhibit 6.

**FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT OF
U.S. COPYRIGHT REGISTRATION VA 1-318-190**

(Birthday Blocks)

27. Glitterwrap incorporates by reference each and every allegation in paragraphs 1 through 26, inclusive, as if fully set forth herein.

28. Glitterwrap is the owner of the designs registered in U.S. Copyright Registration number VA-1-318-190.

29. Defendants' item numbers NH-TSBB01L and NH-TSBB01 Birthday Blocks, illustrated in Exhibit 4, infringes Glitterwrap's Copyright Registration number VA-1-318-190.

30. Specifically, Defendants' item numbers NH-TSBB01L and NH-TSBB01 Birthday Blocks are copies of Glitterwrap's "Birthday Blocks," which has been afforded protection under Copyright Registrations VA-1-318-190.

31. Upon information and belief, Defendants have sold item numbers NH-TSBB01L and NH-TSBB01 Birthday Blocks at retail stores.

32. Defendants' conduct, as hereinabove averred, is causing and, unless enjoined and restrained by this Court, will continue to cause Glitterwrap great and irreparable injury that cannot fully be compensated or measured in money.

33. Glitterwrap has no adequate remedy at law.

**SECOND CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT OF
U.S. COPYRIGHT REGISTRATION VA 1-266-204**

(Pastel Streamers)

34. Glitterwrap incorporates by reference each and every allegation in paragraphs 1 through 33, inclusive, as if fully set forth herein.

35. Glitterwrap is the owner of the designs registered in U.S. Copyright Registration number VA 1-266-204.

36. Defendants' product number NH-TSBB01 Pastel Streamers, illustrated in Exhibit 5, infringes Glitterwrap's Copyright Registration number VA 1-266-204.

37. Specifically, Defendants' product number NH-TSBB01 Pastel Streamers is a copy of Glitterwrap's "Pastel Streamers," which has been afforded Copyright Registration Number VA-1-266-204.

38. Upon information and belief, Defendants have sold product number NH-TSBB01 Pastel Streamers at retail stores.

39. Defendants' conduct, as hereinabove averred, is causing and, unless enjoined and restrained by this Court, will continue to cause Glitterwrap great and irreparable injury that cannot fully be compensated or measured in money.

40. Glitterwrap has no adequate remedy at law.

WHEREFORE, Glitterwrap demands judgment as follows:

A. that a judgment be entered by this Court preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them from further acts of direct or indirect infringement of Glitterwrap's Copyrights pursuant to 17 U.S.C. §502 ;

B. that Defendants, their officers, agents, servants, attorneys, employees, subsidiaries, affiliates, successors, and assigns, and all those in active concert or participation with any of them who receive notice directly or otherwise, be enjoined and restrained during the pendency of this action and permanently from manufacturing, vending, printing, importing, offering for sale, selling, advertising, displaying, promoting, or distributing any products incorporating the copyrighted subject matter contained in Glitterwrap's Copyrights pursuant to 17 U.S.C. §502;

C. further, that Defendants be ordered:

i. to deliver up for destruction all of the merchandise in their possession or control the products and any other product that incorporate any of the copyrighted designs, as well as all means for producing, advertising, or promoting such infringing merchandise;

ii. to make diligent efforts to recall all of the materials at issue already distributed; and

iii. to file with this Court and serve on Glitterwrap ten (10) days after the date of the injunction a report in writing and under oath setting forth in detail the manner or form in which Defendants have complied fully with the injunction;

D. that an accounting and judgment be rendered against Glitterwrap for:

i. all profits received by Defendants from the sale of the products infringing the copyrights of Glitterwrap as provided by 17 U.S.C. §504(b);

ii. all damages sustained by Glitterwrap as a result of the copyright infringement of Defendants, including compensation to Glitterwrap fully for all sales of products that have been diverted or reduced as a result of the infringement by 17 U.S.C. §504(b);

iii. in the event Glitterwrap so elects, statutory damages in the amount of \$150,000 from Defendants for each item infringing Glitterwrap's copyright as authorized by 17 U.S.C. §504(c)(2);

iv. against Defendants all profits received by any customer receiving distribution of the infringing products from Defendants for the infringement induced for each of such customers by Defendants;

v. in the event Glitterwrap so elects, statutory damages in the amount of \$150,000 as authorized by 17 U.S.C. §504(c)(2) against Defendants for the infringement induced for each customer receiving distribution of the infringing products of Defendants;

E. that Glitterwrap have and receive its costs in this action, including an award of its reasonable attorney fees with interest from the date of the filing of this Complaint pursuant to 17 U.S.C. §505;

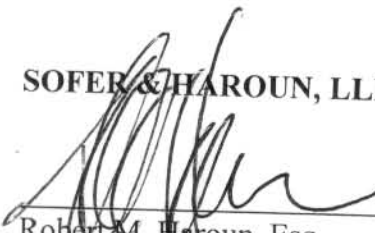
F. that Glitterwrap receive interest on its damage awards from the date of injury; and

G. that this Court award such other and further relief as this Court may deem just and proper.

Dated: New York, NY
September 11, 2007

SOFER & HAROUN, LLP

By:



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